

**LAW OFFICES OF  
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August 17, 2009

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Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D. C. 20423

RE: Docket No. 42104, *Entergy Arkansas, Inc. and Entergy Services, Inc. v.  
Union Pacific Railroad Company and Missouri & Northern Arkansas  
Railroad Company, Inc.*  
Finance Docket No. 32187, *Missouri & Northern Arkansas Railroad  
Company, Inc.—Lease, Acquisition and Operation Exemption—Missouri  
Pacific Railroad Company and Burlington Northern Railroad Company*

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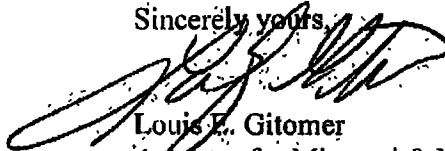
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Dear Acting Secretary Quinlan:

Enclosed for efilng is the Motion to Dismiss of the Missouri & Northern  
Arkansas Railroad Company, Inc.

Thank you for your assistance. If you have any questions please call or email me.

Sincerely yours,



Louis E. Gitomer  
Attorney for Missouri & Northern Arkansas  
Railroad Company, Inc.

Enclosure

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Docket No. 42104.

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ENTERGY ARKANSAS, INC. AND ENTERGY SERVICES, INC.  
v.  
UNION PACIFIC RAILROAD COMPANY AND MISSOURI & NORTHERN ARKANSAS  
RAILROAD COMPANY, INC.

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Finance Docket No. 32187

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MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC.  
-LEASE, ACQUISITION AND OPERATION EXEMPTION-  
MISSOURI PACIFIC RAILROAD COMPANY AND  
BURLINGTON NORTHERN RAILROAD COMPANY

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MOTION TO DISMISS

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Scott G. Williams Esq.  
Senior Vice President & General Counsel  
RailAmerica, Inc.  
7411 Fullerton Street, Suite 300  
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Attorneys for: MISSOURI & NORTHERN  
ARKANSAS RAILROAD COMPANY, INC.

Dated: August 17, 2009

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Docket No. 42104

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MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC.  
-LEASE, ACQUISITION AND OPERATION EXEMPTION-  
MISSOURI PACIFIC RAILROAD COMPANY AND  
BURLINGTON NORTHERN RAILROAD COMPANY

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MOTION TO DISMISS

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Missouri & Northern Arkansas Railroad Company, Inc. ("M&NA") moves to dismiss (1) the Amended Complaint filed on July 27, 2009 (the "Amended Complaint") by Entergy Arkansas, Inc. ("EAI") and Entergy Services, Inc. ("ESI"), jointly referred to as Entergy and (2) the Joinder in and Supplement to Amended Complaint Filed by Entergy (the "Supplement") filed on July 27, 2009 by Arkansas Electric Cooperative Corporation ("AECC").

There are three independent reasons that justify dismissal of the Amended Complaint and the Supplement. First, a necessary defendant party to this proceeding is missing. Second, there is a transportation contract between the Union Pacific Railroad Company ("UP") covering the transportation of coal from the Powder River Basin (the "PRB") to the Independence power plant. Third, a published through route exists between M&NA and Class I railroads other than UP.

## ARGUMENT

### **1. A necessary defendant party is missing from the amended complaint.**

M&NA is the only party defendant to the through route prescription. The Supreme Court has said that "A 'through route' is an arrangement, express or implied, between connecting railroads for the continuous carriage of goods from the originating point on the line of one carrier to destination on the line of another." *Thompson v. United States*, 343 U.S. 549, 556 (1952). In order to prevail under 49 C.F.R. §1144, Entergy and AECC must demonstrate that the UP-M&NA service is less efficient, among other factors, than the service that would be provided over a through route between M&NA and another rail carrier that is capable of delivering coal to M&NA from the PRB. UP and M&NA are the only defendants in this proceeding. No other railroad, including BNSF Railway Company ("BNSF"), is a defendant in this proceeding. Therefore, the Board cannot make the necessary comparison required under its rules. Since UP and M&NA are the only defendants in this proceeding, there is a question of the Board's authority to prescribe a through route over a railroad that is not a defendant.

### **2. The UP contract with Entergy will not expire in the near future.**

There is a transportation contract between UP and Entergy covering the transportation of coal from the PRB to the Independence power plant. As shown in the Highly Confidential Exhibits to the Amended Complaint, that contract runs for a time period, which is far beyond the period where the Board has allowed complaints to be filed when traffic is under contract. *Omaha Public Power District v. Union Pacific Railroad Company*, STB Docket No. 42006 (STB served October 17, 1997) ("this case could not go forward now because this contract is not yet close to expiration") at 3. Since the traffic for which Entergy is seeking a through route is

subject to a movement under a contract for an extended period of time, the Board should dismiss the Amended Complaint and Supplement.

**3. There is a through route between M&NA and BNSF.**

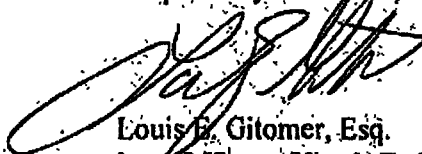
There is a tariff permitting the use of a through route between M&NA and BNSF over the route between the PRB and Entergy's Independence, AR power plant. See Exhibit 1, M&NA Tariff 8006-C. The relief sought by Entergy and AECC is unnecessary since Entergy can route traffic over a through route that is open under the M&NA tariff today.

**CONCLUSION**

M&NA respectfully requests the Board to dismiss the Amended Complaint and Supplement for the reasons set forth above.

Scott G. Williams Esq.  
Senior Vice President & General Counsel  
RailAmerica, Inc.  
7411 Fullerton Street, Suite 300  
Jacksonville, FL 32256  
(904) 538-6329

Respectfully submitted,



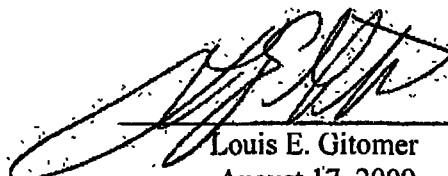
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(410) 296-2250  
Lou\_Gitomer@verizon.net

Attorneys for: MISSOURI & NORTHERN  
ARKANSAS RAILROAD COMPANY, INC.

Dated: August 17, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused the foregoing document to be served upon counsel for  
Entergy Arkansas, Inc., Entergy Services, Inc., Union Pacific Railroad Company, Arkansas  
Electric Cooperative Corporation, and BNSF Railway Company electronically.



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Louis E. Gitomer  
August 17, 2009

**EXHIBIT 1-M&NA TARIFF 8006-C**

**MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC.****FREIGHT TARIFF 8006-C**

(Cancels Freight Tariff 8006-B and all Supplements)

**SECTION 1 - RULE 11 RATES**

The number prefixed to station name is its index.

**ITEM 100**

ALL COMMODITIES, as described in Railinc's Standard Transportation Commodity Code STCC 6001 series.

Car/Cars may be loaded as full as possible but not to exceed the load limit of the car.

Unless other arrangements have been made with the MNA Marketing & Sales Manager, freight will be paid by the MNA by the following: If the traffic is received by the MNA from a connecting carrier, the consignee will pay the freight. If the freight is delivered to a connecting carrier from the MNA, the consignor will pay the freight.

Cars moving commodities with STCC 48 and 49 series will be assessed an additional charge of \$200 per car. [I]

Column 1 rates apply to traffic interchanged at Joplin, Missouri with the BNSF or KCS Railroad.

Column 2 rates apply to traffic interchanged at Aurora, Missouri with the BNSF Railroad.

Column 3 rates apply to traffic interchanged at Joplin, Missouri with the BNSF or KCS Railroad and moving under STCC 4920523 or 4930030.

Column 4 rates apply to traffic interchanged at Aurora, Missouri with the BNSF Railroad and moving under STCC 4920523 or 4930030.

INDEX ORIGIN / DESTINATION		RATE IN COLUMNS			
		1	2	3 [A]	4 [A]
MISSOURI		RATES IN DOLLARS PER CAR			
05	ADRIAN [I]	800	700	N/A	N/A
10	APPLETON CITY	800	800	N/A	N/A
15	ARCHIE [I]	800	700	N/A	N/A
20	ATLAS	325 [I]	500	N/A	N/A
25	AURORA	700 [I]	300	N/A	N/A
30	BRANSON	700 [I]	500	N/A	N/A
35	BUTLER [I]	800	700	N/A	N/A
40	CARTHAGE	500	500	1,000	1,200
45	CARYTOWN	500	500	N/A	N/A
50	CLINTON	800	800	N/A	N/A
55	CRANE	700 [I]	500	N/A	N/A
60	EVE	800	700	N/A	N/A
65	GALENA	700 [I]	500	N/A	N/A
70	GRETNA	700 [I]	500	N/A	N/A
75	HARRISONVILLE [I]	800	700	N/A	N/A
80	HARWOOD	800	800	N/A	N/A
85	HOBERG	700 [I]	300	N/A	N/A
90	HOLLISTER	700 [I]	500	N/A	N/A
95	HORTON [I]	800	700	N/A	N/A
100	IRWIN [I]	800	700	N/A	N/A
105	JASPER	700 [I]	500	N/A	N/A
110	JOPLIN	325 [I]	500	N/A	N/A
115	LADUE	800	800	N/A	N/A
120	LAMAR [I]	800	700	N/A	N/A
125	MILO [I]	800	700	N/A	N/A
130	MONTROSE	800	800	N/A	N/A
135	NEVADA [I]	800	700	N/A	N/A
140	PASSAIC [I]	800	700	N/A	N/A
145	REEDS SPRINGS	700 [I]	500	N/A	N/A
150	RICH HILL [I]	800	700	N/A	N/A



155	ROCKVILLE	800	800	N/A	N/A
160	SHELDON [U]	800	700	N/A	N/A
165	WALKER	800	800	N/A	N/A
170	WEBB CITY	325 [U]	500	N/A	N/A
<b>RATE IN COLUMNS</b>					
<b>INDEX ORIGIN / DESTINATION</b>		<b>1</b>	<b>2</b>		
<b>ARKANSAS</b>		<b>RATES IN DOLLARS PER CAR</b>			
175	ARK EASTMAN/MAGNESS [U]	900	700	2,000	1,500
180	BATESVILLE [U]	900	700	2,000	1,500
185	BERGMAN [U]	900	700	N/A	N/A
190	CALICO ROCK [U]	900	700	N/A	N/A
195	COTTER [U]	900	700	N/A	N/A
200	CRESWELL [U]	900	700	N/A	N/A
205	CRICKET [U]	900	700	N/A	N/A
210	CUSHMAN [U]	900	700	N/A	N/A
215	DIAZ JCT [U]	900	700	N/A	N/A
220	FLIPPIN [U]	900	700	N/A	N/A
225	GUION [U]	900	700	N/A	N/A
230	INDEPENDENCE [U]	900	700	N/A	N/A
235	MOOREFIELD [U]	900	700	N/A	N/A
240	MYERSVILLE [U]	900	700	N/A	N/A
245	NEWARK [U]	900	700	N/A	N/A
250	NORFORK [U]	900	700	N/A	N/A
255	PYATT [U]	900	700	N/A	N/A
260	YELLVILLE [U]	900	700	N/A	N/A

ISSUED: June 6, 2008

EFFECTIVE: July 1, 2008

**ITEM 200**

Any car delivered to the MNA from the BNSF or KCS that is moving on any pricing document and interchanged to the MNA without the necessary EDI 417 full waybill data which prevents the MNA from readily determining at the time of interchange that the car is Rule 11; BNSF or KCS shall pay MNA a fee of \$500 per car.

**ISSUED BY:**

Missouri & Northern Arkansas Railroad  
PO Box 776  
514 North Ormer  
Carthage, MO 64836

N/A denotes not applicable

[A]denotes addition. [U]denotes increase [R]denotes decrease [C]denotes change in neither an increase nor a decrease